Originally, in the United States, probate jurisdiction was of a special character, exclusively vested in independent courts, and removal to the federal courts was not available. *Broderick's Will*, 21 Wall. (U. S.) 503. A removal of a will contest is, however, permitted when the state courts of general civil jurisdiction, as distinguished from special appellate courts of probate, are authorized by statute to determine the validity of a will; provided also that the will has been probated by lower courts and is attacked as a muniment of title. *Gaines* v. *Fuentes*, 92 U. S. 10; *Brodhead* v. *Shoemaker*, 44 Fed. 518. See *Ellis* v. *Davis*, 109 U. S. 485, 496, 3 Sup. Ct. Rep. 327, 334. But a bill to contest a will and to enjoin a distribution under it is not removable. *Farrel* v. *O'Brien*, 199 U. S. 89, 25 Sup. Ct. Rep. 727. A distinction is drawn between an independent controversy *inter partes* and a proceeding ancillary to the original probate. Yet the proof of the will is the same in both cases; so that the distinction hardly seems tenable. In the principal case, the only issue on appeal may have been the one of removal and not the probate of the will, for the lower court had not passed on the will. If the state court did have probate jurisdiction, probate by the lower court is immaterial, for the appeal is an investigation *de novo* at any rate. See 1914 PARK'S ANN. CODE GA., § 5014.

JUDGMENTS — FOREIGN DIVORCE DECREE — COLLATERAL ATTACK FOR FRAUD. — A husband sued for divorce in Vermont. He offered to show that his wife's divorce from her first husband was obtained in New York through false testimony as to her age. *Held*, the foreign decree cannot be attacked collaterally. *Deyette* v. *Deyette*, 104 Atl. 232 (Vt.).

If a court obtains jurisdiction through fraud of a party, its judgment is merely voidable, impeachable by direct proceedings. *Ex parte Moyer*, 12 Idaho, 250, 85 Pac. 897; *Mahon* v. *Justice*, 127 U. S. 700, 8 Sup. Ct. Rep. 1204. See 20 HARV. L. REV. 239. But if the court is defrauded into thinking it has jurisdiction when there is none in fact, the judgment is assailable collaterally. *Dunham* v. *Dunham*, 162 Ill. 589, 44 N. E. 841; *Magowan* v. *Magowan*, 57 N. J. Eq. 322, 42 Atl. 330; *Plummer* v. *Plummer*, 37 Miss. 185. If the fraud merely goes to the evidence, there can be no collateral attack. *Field* v. *Sanderson*, 33 Mo. 542; *Christmas* v. *Russell*, 5 Wall. (U. S.) 290; *Nicholson* v. *Nicholson*, 113 Ind. 131, 15 N. E. 223. But see *contra*, *Dumont* v. *Dumont*, 45 Atl. 107 (N. J.). Even a direct attack will generally not be allowed in such a case; otherwise litigation would become endless. *Greene* v. *Greene*, 2 Gray (Mass.) 361; *United States* v. *Throckmorton*, 98 U. S. 61; *Parish* v. *Parish*, 9 Ohio St. 534. But if the fraud is extrinsic, as in preventing the unsuccessful party from fully presenting his case, the judgment may be attacked collaterally. *Daniels* v. *Benedict*, 50 Fed. 347. A stranger, however, may in any case of fraud impeach the judgment collaterally, because it is his only means of availing himself of the fraud. *De Armond* v. *Adams*, 25 Ind. 455; *Sidensparker* v. *Sidensparker*, 52 Me. 481; *Ogle* v. *Baker*, 137 Pa. St. 378, 20 Atl. 998. See *Greene* v. *Greene*, 2 Gray (Mass.) 361, 366. But the stranger must be prejudiced with regard to some pre-existing right. *Ruger* v. *Heckel*, 85 N. Y. 483. See also FREEMAN, JUDGMENTS, § 335. In the principal case the second husband had no such right. Some courts will never disturb a divorce decree even in case of the grossest fraud, because of the extensive collateral effect on third parties. *Parish* v. *Parish*, *supra*; *DeGraw* v. *DeGraw*, 7 Mo. App. 121. Generally, however, divorce decrees are treated like any other. *Daniels* v. *Benedict*, *supra*; *Johnson* v. *Coleman*, 23 Wis. 452. For a discussion of the distinction between collateral and direct attack, see 23 HARV. L. REV. 67.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — RECOVERY FOR NON-OCCUPATIONAL DISEASES. — A common laborer was directed in the course of his employment to do some painting on a building. The cold weather

made the paint very difficult of application, and he was required, at intervals, to heat it in a closed unventilated room provided for the purpose. After working for two days on this employment, he contracted a severe case of lead poisoning, from the effects of which he died shortly thereafter. *Held*, that this was an injury by accident and not an occupational disease. *Industrial Commission of Ohio* v. *Roth*, 120 N. E. 172 (Ohio).

The courts have been very cautious in awarding compensation for diseases, other than occupational, because the danger of fraudulently attributing every illness to the industry is considerable. The strict compliance, therefore, with the provisions present in most acts, that the injury be traceable to accidental origin, and that the date of such be definitely fixed, has been required. *Brintons, Ltd.* v. *Turvey*, [1905] A. C. 230; *Glasgow Coal Co.* v. *Welch*, [1916] 2 A. C. 1; *Vennen* v. *New Dells Lumber Co.*, 161 Wis. 370, 154 N. W. 640. The English courts, however, in an important case seem to have imposed these requirements too stringently, in demanding that the injury result from a single fortuitous event, and to them it is insufficient to show that it must have been the outcome of one or more of a few occurrences. *Eke* v. *Hart-Dyke*, [1910] 2 K. B. 677. The facts in the principal case are almost analogous to those in the English case, yet the Ohio court reached the opposite result. The facts in both show that the illness resulted from accidental source and the dates of such were sufficiently fixed and certain. The causal connection in both was obvious and imposition was amply guarded against. It seems, therefore, that the Ohio court, in refusing to construe so strictly, has arrived at a more sound and just result.

MECHANICS' LIENS — RIGHT OF SUBCONTRACTOR TO LIEN REGARDLESS OF ORIGINAL CONTRACT. — A statute provided that a subcontractor shall have a lien for labor or material furnished for the erection of a house, such lien being perfected only after notice thereof had been filed within a period of sixty days. It further provided that "the risk of all payments made to the original contractor shall be upon the owner until the expiration of the 60 days hereinbefore specified." *Held*, that the subcontractor's lien does not depend upon the terms of the original contract. *Coates Lumber & Coal Co.* v. *Klaas*, 168 N. W. 647 (Neb.).

The statute governing in the principal case is of the type which creates in favor of the subcontractor a direct lien, as distinguished from the type of statute which grants a lien derivatively, through the principal contractor's right thereto. See 2 JONES, LIENS, § 1286. The former type of legislation has been frequently assailed on the ground of unconstitutionality, but the courts have declared in its favor in most jurisdictions. Thus, the validity of a statute securing a lien irrespective of the state of accounts between the owner and the principal contractor has been sustained practically in all states. *Ballou* v. *Black*, 21 Neb. 131, 31 N. W. 673; *Mallory* v. *La Crosse Abattoir Co.*, 80 Wis. 170, 49 N. W. 1071; *Jones* v. *Great Southern Fireproof Hotel Co.*, 86 Fed. 370. *Contra*, *Palmer* v. *Tingle*, 55 Ohio St. 423, 45 N. E. 313. And a statute construed to create a lien despite a stipulation against such in the original contract, though meeting with greater opposition, has been sanctioned by the weight of authority. *Norton* v. *Clark*, 85 Me. 357, 27 Atl. 252; *Miles* v. *Coutts*, 20 Mont. 47, 49 Pac. 393; *Whittier* v. *Wilbur*, 48 Cal. 175. *Contra*, *Kelly* v. *Johnson*, 251 Ill. 135, 95 N. E. 1068; *Waters* v. *Wolf*, 162 Pa. 153, 29 Atl. 646. It is true that such statutes do somewhat impair the freedom to contract and do create a danger of making the owner liable to double payment, but no undue hardship results by requiring him to regard sufficiently the rights of a third person who has increased the value of his property. Again, the desirability of these statutes is obvious when we consider the encouragement they offer to a class which by its activities aids so materially in promoting the public welfare.